

## Department of Justice

## § 70.25

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with the Department regulations or the terms and conditions of the award, must be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Department authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Department does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3), of this section applies automatically to all projects or programs.

(e) Unless the Department's regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See §§ 70.30 through 70.37).

(h) Unless the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trade-

mark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(i) Recipients must account for seized assets from the date of seizure until forfeiture and liquidation of funds occur.

### **§ 70.25 Revision of budget and program plans.**

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon the Department's requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients must request in writing prior approval from the Department for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, approval is required by the Department.

(6) The inclusion, unless waived by the Department, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR

part 31, “Contract Cost Principles and Procedures,” as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) The Department restricts the transfer of funds among direct cost categories or programs, functions and activities, without prior written approval for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed ten percent of the total budget as last approved by the Department. The Department will not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(e) All other changes to nonconstruction budgets, except for the changes described in paragraph (g) of this section, do not require prior approval.

(f) For construction awards, recipients must request prior written approval promptly from the Department for budget revisions whenever paragraph (f) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Department funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 70.27.

(g) When the Department makes an award that provides support for both construction and nonconstruction work, the Department will require the recipient to request prior approval from the Department before making any fund or budget transfers between the two types of work supported.

(h) For both construction and nonconstruction awards, the Department

will require recipients to notify the Department in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the award, whichever is greater. This notification will not be required if an application for additional funding is submitted for a continuation award.

(i) When requesting approval for budget revisions, recipients must use the budget forms that were used in the application unless the Department indicates a letter of request suffices.

(j) Within thirty calendar days from the date of receipt of the request for budget revisions, the Department will review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of thirty calendar days, the Department will inform the recipient in writing of the date when the recipient may expect the decision.

[Order No. 1980–95, 60 FR 38242, July 26, 1995; Order No. 1998–95, 60 FR 57931, Nov. 24, 1995]

**§ 70.26 Non-Federal audits.**

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations must follow the audit threshold in revised OMB Circular A–133 in determining